



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Agriculture

☒ Preproposal Statement of Inquiry was filed as WSR 05-02-004; or☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or☐ Proposal is exempt under RCW 34.05.310(4).☒ Original Notice☐ Supplemental Notice to WSR _____☐ Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) Chapter 16-730 WAC Asparagus equipment leasing program

Hearing location(s):Department of Agriculture
Natural Resources Building
1111 Washington St. SE, 2nd Floor, Room 271
Olympia, WA 98504-2560**Submit written comments to:**Name: George Huffman
Address: Department of Agriculture, 1111 Washington St. SE
PO Box 42560, Olympia WA 98504-2560
e-mail ghuffman@agr.wa.gov
fax (360) 902-2092 by 5:00 p.m., June 21, 2005

Date: June 21, 2005 Time: 2:00 p.m.

Assistance for persons with disabilities: Contact

Virginia Walsh by June 13, 2005

Date of intended adoption: June 28, 2005

(Note: This is NOT the effective date)

TTY (360) 902-1976 or () _____

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The purpose of the proposed chapter 16-730 WAC (Asparagus equipment leasing program) is to implement chapter 276, Laws of 2004 (ESHB 2459) by providing for the purchase of automated labor saving equipment that will strengthen the fresh, frozen or pickled after harvest asparagus industry.

Reasons supporting proposal: The proposed permanent rules should be supported because:

(1) They implement chapter 276, Laws of 2004, Sec. 308(10) (ESHB 2459), which directed the department to:

- (a) Purchase agricultural products packing equipment; and
- (b) Negotiate an appropriate agreement with the agricultural industry for the use of that equipment.

(2) They also implement RCW 15.04.402, which authorizes the department to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber and maintain the economic well being of the Washington state agricultural industry.

Statutory authority for adoption: RCW 15.04.402, Chapter 276, Laws of 2004 (ESHB 2459) and chapter 34.05 RCW**Statute being implemented:** Chapter 15.04 RCW and Chapter 276, Laws of 2004 (ESHB 2459)**Is rule necessary because of a:**

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

DATE May 18, 2005**NAME** (type or print) William E. Brookreson**SIGNATURE****TITLE** Deputy Director**CODE REVISER USE ONLY**CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

MAY 18 2005

TIME

9:08

WSR

05-11-098

AM

PM

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Washington State Department of Agriculture

☐ Private

☐ Public

☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Greg Wright	Olympia	(360) 902-1918
Implementation....	Greg Wright	Olympia	(360) 902-1918
Enforcement.....	Greg Wright	Olympia	(360) 902-1918

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

X No. Explain why no statement was prepared. Apart from the time required to complete the program application, which the department does not consider a "more than minor" cost, the proposed rules will not impose any costs on program participants. In fact, the purpose of the program is to help ensure the survival of the Washington state asparagus industry.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

X No: Please explain: The Washington State Department of Agriculture is not a listed agency in RCW 34.05.328(5)(a)(i).

Chapter 16-730 WAC

ASPARAGUS EQUIPMENT LEASE PROGRAM

NEW SECTION

WAC 16-730-005 What is the purpose of the asparagus equipment lease program? (1) The Washington state department of agriculture is establishing the asparagus equipment lease program to implement section 308(10), chapter 276, Laws of 2004 (ESHB 2459), which directs the Washington state department of agriculture (WSDA) to purchase agricultural products packing equipment and to negotiate an appropriate agreement with the agricultural industry for the use of that equipment.

(2) The asparagus equipment lease program allows Washington state packers and handlers of Washington asparagus to lease with an opportunity to purchase automated labor saving equipment that will strengthen their post-harvest efforts to efficiently handle or pack fresh, frozen or pickled asparagus.

NEW SECTION

WAC 16-730-007 How does the department ensure that program participants comply with the program's purpose? To ensure that program participants are in compliance with the terms of the program and to ensure that the leased equipment is being used only to pack and process fresh, frozen or pickled asparagus, the participating handlers must, during each year of their participation, give the department or its agent a letter:

(1) Certifying that the leased equipment is being used for the program's intended purpose; and

(2) Summarizing the cost and labor savings for that year.

NEW SECTION

WAC 16-730-010 What definitions are important to this chapter? **"Applicant"** means any person who applies to participate in the equipment leasing program and commercially handles 250,000 pounds or more of asparagus in the calendar year that they apply.

"Approved handler/packer" means any asparagus handler and/or packer who has submitted an equipment leasing program application to the department and has been approved by the department to participate in the program.

"Automation" means the technique and equipment used to bring about automatic operation and control of a process.

"Department" means the Washington state department of agriculture.

"Director" means the director of the Washington state department of agriculture or the director's designee.

"Handler/packer" means a person who sells, arranges for sale, represents, processes, distributes or packages fresh, frozen or pickled asparagus.

"Facility" means any place where fresh asparagus is prepared, handled and packaged as fresh, frozen, or pickled for sale.

"Labor saving" means actions, activities or processes designed to decrease the amount of human labor needed to prepare, handle or package fresh, frozen or pickled asparagus.

"Leasing" means to obtain the use of asparagus handling or packing equipment through the asparagus equipment leasing program.

"Packing equipment" means equipment associated with the activities of the post-harvest handler/packer of fresh, frozen or pickled asparagus.

"Person" means an individual, firm, partnership, corporation, or association engaged in handling and/or packing fresh, frozen or pickled Washington state asparagus.

"Program administrator" means the director of the Washington state department of agriculture or the director's designee.

"Review committee" means a group of five to seven people representing the department and the Washington asparagus commission staff and members and one at large agricultural representative who is neither directly affiliated with the asparagus industry nor any of the equipment leasing program applicants. The purpose of the committee is to review equipment leasing program applications.

NEW SECTION

WAC 16-730-015 How will the asparagus equipment leasing program be administered? The director or the director's designee will administer the asparagus equipment leasing program according to the rules of this chapter. If necessary, the program

administrator, following the rule-making procedures in chapter 34.05 RCW (Administrative Procedure Act), may develop and implement additional rules or guidelines to ensure that this program is successful in achieving its purpose.

NEW SECTION

WAC 16-730-020 Who is eligible to participate in the asparagus equipment leasing program? To be eligible to participate in the asparagus equipment leasing program, a post-harvest asparagus handler must:

(1)(a) Pack a minimum of 250,000 pounds of fresh, frozen or pickled asparagus in Washington in the calendar year in which they apply; and

(b) Provide documentation verifying the 250,000 pounds. Verification can include asparagus commission assessments or other industry accepted documentation.

(2) Comply with all applicable federal, state, and local laws and rules related to doing business in Washington and handling food products.

NEW SECTION

WAC 16-730-025 How does an eligible asparagus handler/packer apply to the equipment leasing program? (1) Eligible handler/packers can obtain an equipment leasing program application by contacting:

Asparagus Leasing Program
Washington State Department of Agriculture
1111 Washington St. S.E., 2nd Floor
P.O. Box 42560
Olympia, WA 98504-2560

(2) Eligible applicants must complete the program application and provide the department with the following information:

(a) Verification consistent with normal and usual leasing agreements that their business is a going concern;

(b) Verification that they have the ability to adequately insure any equipment they may lease;

(c) A statement declaring their eligibility and intent to participate in the program;

(d) Documentation of their ability to provide the necessary upkeep and maintenance of any equipment they may lease;

(e) A description of the equipment to be leased and its cost;

(f) A description of how the leased equipment will automate

their post-harvest operation and how it will reduce post-harvest labor costs; and

(g) The pounds of asparagus processed for the period of years identified on the application and documentation verifying the pounds processed.

(3) The completed application and the related information (subsection (2) of this section) must be submitted to:

Asparagus Leasing Program
Washington State Department of Agriculture
1111 Washington St. S.E., 2nd Floor
P.O. Box 42560
Olympia, WA 98504-2560

NEW SECTION

WAC 16-730-030 When will an applicant know if they have been approved to participate in the equipment leasing program? (1) The department, in consultation with the Washington asparagus commission, the Washington asparagus council and the industry at large, will establish application deadlines, application review dates and dates for notifying applicants if they have been accepted to participate in the equipment lease program.

(2) The process for reviewing and approving application is as follows:

(a) The review committee will review all applications and recommend approved applicants to the director.

(b) The director will review the review committee's recommendations.

(c) Once the director approves the recommended applicants, applicants will be notified of the results within five working days of the director's decision.

(3) The department may implement additional application cycles as needed in order to insure that handler/packers may fully participate in the program.

NEW SECTION

WAC 16-730-035 If an application is denied, can the applicant request a review of the director's decision? (1) An applicant whose application has been denied by the director may request a review of the director's decision. The request for review must:

(a) Specify the date of the decision or action being appealed;

(b) Explain as precisely as possible the issue to be resolved by the administrative review;

- (c) Include the address of the applicant; and
- (d) Be signed by the applicant.
- (2) Administrative reviews of denied applications will follow an informal process conducted by the director's designee.
 - (a) The review will be completed within thirty days after receipt of the review request.
 - (b) Once the review is completed, the department has ten days to inform the handler of the review decision.
- (3) The rights of the department provided in this section are exclusive and are in addition to any other rights and remedies provided by law.

NEW SECTION

WAC 16-730-040 If an applicant's initial application is disapproved, can the applicant reapply to the equipment leasing program? (1) Program applicants whose initial application was denied have ten days from the date they received the director's decision denying their application to reapply.

(2) Applicants must reapply by following the procedures outlined in WAC 16-730-025.

(3) When reapplying, the applicant must request different equipment and/or a different mix of equipment from that listed on their original application.

NEW SECTION

WAC 16-730-045 What is the process the program will follow to distribute equipment leasing money to approved applicants? The program's equipment leasing money will be distributed indirectly to approved applicants as follows:

(1) The department, in consultation with the Washington asparagus commission, the Washington asparagus council and the asparagus industry at large, will determine the amount of equipment leasing money allocated to each approved applicant and then distribute this money to a department approved equipment leasing company.

(2) The approved leasing company will then purchase the equipment and subsequently lease it to an approved applicant.

NEW SECTION

WAC 16-730-050 How will the program's equipment leasing money be allocated in 2004? (1) The initial allocation of equipment leasing money for 2004 will be distributed based upon documented annual average pounds of asparagus an approved handler/packer reported from 2001 through 2004.

Note: If additional application cycles are needed to administer current and future equipment lease allocations and distributions, the department may adjust the initial four-year annual average production period (2001-2004).

(2)(a) Unless the department, in consultation with the Washington asparagus commission, the Washington asparagus council and the asparagus industry at large, determines that the allocation formula be changed, all approved applicants will receive either a base amount of at least \$75,000 for their initial 2004-program allocation or an amount adjusted to reflect an appropriate base for future program offerings.

(b) If the department does change the allocation formula, it will notify the Washington state asparagus industry and, specifically, Washington state asparagus handler/packers.

(3) The department has developed the following categories to help allocate the equipment lease program's initial 2004 offering:

Handler/Packer Categories*	Pounds of Asparagus Handled Annually
Small	Less than 1,000,000 pounds
Medium	1,000,000 to 2,000,000 pounds
Large	2,000,001 to 5,000,000 pounds
*Note: These categories could change. If they do, the department will notify asparagus handler/packers and the industry.	

NEW SECTION

WAC 16-730-055 For the initial leasing program, what are the base distribution amounts for each category of handler/packers?

Note: The department will always work with the review committee to assure that the distributions to approved applicants are fair and equitable and based on the pounds processed formula.

(1) The final handler/packer allocation for 2004 is illustrated in the following table:

Handler/Packer Size	Dollar Allocation per Handler/Packer
Small	\$87,000.00
Medium	\$110,500.00
Large	\$154,500.00

- (2) Future distributions will be determined by the:
- (a) Amount of program funds available after all administrative and contract-leasing costs are subtracted from the total program allocation received from the legislature; and
 - (b) Number of participants in the program; and
 - (c) Department consultations with the Washington asparagus commission, the Washington asparagus council and the asparagus industry at large.

NEW SECTION

WAC 16-730-060 What requirements apply to equipment leasing program lease agreements? (1) The department will follow office of financial management (OFM) procurement guidelines when selecting a leasing company to act as its agent to purchase and manage all equipment leasing arrangements for all approved handler/packers.

(2) All approved handler/packers will complete a lease agreement with the department approved leasing firm.

(3) All equipment lease agreements:

(a) Must be exclusive to the approved handler/packers for the term of the contract with the leasing company; and

(b) Are not transferable without the written approval of the department.

(4) Lease agreements cannot be paid off before the leasing company's contract termination date.

(5) In addition to the leasing requirements contained in this chapter, the department, in its contract with the leasing company, will include other lease requirements that approved handler/packers must follow.

NEW SECTION

WAC 16-730-062 What happens if an approved handler/packer defaults on a lease? (1) If an approved handler/packer defaults on a lease agreement, the department retains ownership of the equipment and will make the equipment available to other asparagus handlers through a selection process determined by the department in consultation with the Washington asparagus commission, the Washington asparagus council and asparagus industry representatives.

(2) The selection process used by the department to redistribute defaulted lease equipment to approved handler/packers must comply with any applicable state and federal laws and regulations.

NEW SECTION

WAC 16-730-065 How long will the initial asparagus equipment leasing program be in operation? (1) How long the initial equipment leasing program will be in operation will be determined by:

(a) An office of financial management (OFM) approved depreciation schedule for each type of equipment that will be available for leasing; and

(b) The period of time needed to:

(i) Surplus and transfer equipment; and

(ii) Complete program closeout activities.

(2) For any distributions following the initial one, the department may modify the program length, depreciation schedules, contract requirements or leasing agreements.

NEW SECTION

WAC 16-730-070 Who develops the depreciation schedules for the program's leased equipment? The department, with final approval from OFM, will develop depreciation schedules for the program's leased equipment. These schedules will be based upon the characteristic economic useful lives of asparagus processing and handling equipment used by the industry.

NEW SECTION

WAC 16-730-075 Will the equipment used in the asparagus equipment leasing program be offered for sale to the handler/packer who leased it? (1) At the end of its depreciation period, the equipment leased to a handler/packer will be declared "surplus" and offered for sale to the handler/packer or their designee.

(2) If a handler/packer wants to sell their leased equipment to a designee, they must complete a designee form and have the form approved by the department.